

DOCKET NO. 2021-89-E
DOCKET NO. 2021-90-E

Duke Energy Carolinas, LLC's and Duke Energy Progress LLC's 2021 Avoided Cost Proceeding Pursuant to S.C. Code Ann. Section 58-41-20(A)

**DIRECT TESTIMONY OF
DAVID B. JOHNSON
ON BEHALF OF DUKE ENERGY
CAROLINAS, LLC AND DUKE
ENERGY PROGRESS, LLC**

1 **I. INTRODUCTION AND PURPOSE**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is David B. Johnson. My business address is 400 South Tryon Street,
4 Charlotte, North Carolina 28202.

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by Duke Energy Corporation ("Duke Energy") as Director of
7 Business Development and Compliance.

8 **Q. PLEASE DESCRIBE YOUR CURRENT RESPONSIBILITIES IN YOUR**
9 **POSITION WITH DUKE ENERGY.**

10 A. I am responsible for wholesale power purchase agreements ("PPA") that Duke
11 Energy enters into with third-party suppliers. These include PPAs that Duke
12 Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP")
13 (collectively, the "Companies") enter into with Qualifying Facilities ("QFs"),
14 renewable PPAs to comply with South Carolina's Act 236 and North Carolina's
15 Renewable Energy and Energy Efficiency Portfolio Standard ("NC REPS"), North
16 Carolina's Competitive Procurement of Renewable Energy ("NC CPRE") PPAs,
17 and conventional (non-renewable) PPAs. I have responsibility for the negotiation
18 and execution of these PPAs, as well as the on-going management of all executed
19 PPAs. In addition, I am responsible for the Companies' compliance with the NC
20 REPS and the NC CPRE Program.

1 **Q. PLEASE BRIEFLY SUMMARIZE YOUR EDUCATIONAL AND**
2 **PROFESSIONAL EXPERIENCE.**

3 A. My educational background includes a Bachelor of Science in Civil Engineering
4 from the University of Tennessee. With respect to professional experience, I have
5 been in the utility industry for over forty years. I started as an associate Design
6 Engineer in the Design Engineering Department at Duke Power in 1980. From
7 1991-1995, I worked for Duke Energy's affiliate companies Duke/Fluor Daniel and
8 Duke Engineering & Services, Inc. In 1996, I worked in the initial Duke Power
9 Trading Group, where I focused on marketing and business development and
10 management until 2006. From 2006 to 2017, I worked as a Business Development
11 Manager and Director in the Duke Energy wholesale and renewable energy areas.
12 I began my current role in late 2017.

13 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PUBLIC SERVICE**
14 **COMMISSION OF SOUTH CAROLINA?**

15 A. Yes. I testified in the Companies' 2019 avoided cost proceedings in Docket Nos.
16 2019-185-E and 2019-186-E.

17 **Q. ARE YOU INCLUDING ANY EXHIBITS IN SUPPORT OF YOUR**
18 **TESTIMONY?**

19 A. Yes. I am sponsoring six exhibits for DEC and DEP, respectively, and four
20 DEC/DEP joint exhibits, which are described below:

- 21 • **Johnson DEC Exhibit 1** presents a redline copy of DEC's updated
22 Standard Offer purchased power tariff, Schedule PP ("Standard Offer
23 Tariff" or "Schedule PP").

- 1 • **Johnson DEC Exhibit 2** presents a clean copy of DEC's updated Schedule
2 PP.
- 3 • **Johnson DEC Exhibit 3** presents a clean copy¹ of DEC's Standard Offer
4 PPA available to QFs eligible for Schedule PP.
- 5 • **Johnson DEC Exhibit 4** presents a clean copy² DEC's Standard Offer
6 Terms and Conditions for the Purchase of Electric Power ("Standard Offer
7 Terms and Conditions" or "Terms and Conditions") which is incorporated
8 by reference into the Standard Offer PPA.
- 9 • **Johnson DEC Exhibit 5** presents a redline copy of DEC's updated
10 purchased power tariff for QFs not eligible for the Standard Offer ("Large
11 QF Tariff").
- 12 • **Johnson DEC Exhibit 6** presents a clean copy of DEC's updated Large QF
13 Tariff.
- 14 • **Johnson DEP Exhibits 1-6** present the same information for DEP as
15 described above for DEC.
- 16 • **Johnson DEC/DEP Exhibit 7** presents a redline copy of DEC's and DEP's
17 updated Notice of Commitment to Sell Form ("Notice of Commitment
18 Form" or the "Form")
- 19 • **Johnson DEC/DEP Exhibit 8** presents a clean copy of DEC's and DEP's
20 updated Notice of Commitment Form.

¹ A redline copy is not being provided because the only changes are the administrative updates to the header and footer.

² A redline copy is not being provided because the only changes are the administrative updates to the header and footer.

- 1 • **Johnson DEC/DEP Exhibit 9** presents a redline copy of DEC's and DEP's
2 updated standard form of PPA available to QFs that are not eligible for the
3 Standard Offer (the "Large QF PPA").
- 4 • **Johnson DEC/DEP Exhibit 10** presents a clean copy of DEC's and DEP's
5 updated Large QF PPA.

6 **Q. WERE THESE EXHIBITS PREPARED BY YOU OR AT YOUR**
7 **DIRECTION AND UNDER YOUR SUPERVISION?**

8 A. Yes. These exhibits were prepared by me or at my direction and under my
9 supervision.

10 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
11 **PROCEEDING?**

12 A. The purpose of my testimony is to support the non-rate terms and conditions of the
13 Companies' documents used for contracting with QFs under Act 62; that is, the
14 Standard Offer Tariff, Standard Offer PPA, the Standard Offer Terms and
15 Conditions, Large QF PPA, Large QF Tariff, and the Notice of Commitment Form.
16 These documents are largely the same documents approved by the Commission in
17 the 2019 avoided cost proceeding in Docket Nos. 2019-186-E and 2019-185-E
18 ("the 2019 Avoided Cost Proceeding") in Order Nos. 2019-818(A) and 2020-
19 315(A). My testimony explains how these documents are commercially
20 reasonable, consistent with the Public Utility Regulatory Policies Act of 1978
21 ("PURPA"), and comply with the requirements of the South Carolina Energy
22 Freedom Act ("Act 62" or the "Act").

1 **Q. CAN YOU PLEASE DESCRIBE HOW YOUR TESTIMONY IS**
2 **ORGANIZED?**

3 A. Yes, my testimony addresses the above-referenced topics in the following order:

- 4 I. Introduction and Purpose;
5 II. Standard Offer Tariff (Schedule PP);
6 III. Standard Offer PPA;
7 IV. Standard Offer Terms and Conditions;
8 V. Large QF PPA;
9 VI. Large QF Tariff; and
10 VII. Notice of Commitment Form.

11 **Q. CAN YOU EXPLAIN WHY THE CONTRACTING DOCUMENTS THAT**
12 **YOUR TESTIMONY SUPPORTS ARE DIVIDED INTO DOCUMENTS**
13 **APPLICABLE TO “STANDARD OFFER” QFs AND DOCUMENTS**
14 **APPLICABLE TO QFs THAT DO NOT QUALIFY FOR THE STANDARD**
15 **OFFER?**

16 A. Yes. Act 62 essentially divides small power producer QFs into two groups: those
17 QFs that qualify for the “Standard Offer”—as defined in Act 62—and those that do
18 not. Under Act 62, Standard Offer QFs are those QFs whose renewable facilities
19 are 2 megawatts (“MW”) and smaller. Pursuant to Act 62, and the Companies’
20 prior history implementing PURPA, the Companies have three contracting
21 documents that apply to Standard Offer QFs: The Standard Offer Tariff, the
22 Standard Offer PPA, and the associated Terms and Conditions for those
23 transactions.

1 The Companies refer to QFs that do not qualify for the Standard Offer as
2 “Large QFs” because they are larger than the 2 MW threshold limiting eligibility
3 under the Standard Offer. The Companies have two contracting documents that
4 apply to Large QFs: the Large QF Tariff and the Large QF PPA. I would note that,
5 as explained further herein, the Notice of Commitment to Sell Form applies equally
6 to Standard Offer QFs and Large QFs.

7 **II. STANDARD OFFER TARIFF (SCHEDULE PP)**

8 **Q. PLEASE PROVIDE AN OVERVIEW OF THE COMPANIES’ STANDARD**
9 **OFFER TARIFFS THAT YOU HAVE INCLUDED AS DEC AND DEP**
10 **EXHIBITS 1 & 2 TO YOUR TESTIMONY.**

11 A. Schedule PP sets forth the Companies’ avoided cost rates and contract terms
12 available to Standard Offer QFs desiring to sell energy and capacity to DEC and
13 DEP under PURPA. The Standard Offer Tariffs define the “Availability” or
14 qualifications necessary to sell electricity at the standard offer rates approved by
15 the Commission.

16 The Standard Offer Tariffs state the avoided cost rates and rate structure
17 applicable to the purchase and set forth other provisions — including, but not
18 limited to, the Seller or Administrative Charge, power factor-related charges and
19 adjustments, monthly fees associated with interconnection facilities, and the solar
20 Integration Services Charge. The Standard Offer Tariffs apply to all QFs eligible
21 for the Standard Offer, regardless of resource type.

1 **Q. WHAT ARE THE REQUIREMENTS OF ACT 62 AS THEY RELATE TO**
2 **THE COMPANIES' STANDARD OFFER TARIFFS?**

3 A. Act 62 requires each utility's avoided cost methodology to fairly and accurately
4 account for costs avoided by the utility or incurred by the utility, including, but not
5 limited to, energy, capacity, and ancillary services provided by or consumed by
6 small power producers.³

7 **Q. DO THE COMPANIES' PROPOSED STANDARD OFFER TARIFFS**
8 **COMPLY WITH THOSE REQUIREMENTS?**

9 A. Yes. The Standard Offer Tariffs address energy, capacity, and ancillary services,
10 among other factors relevant to the purchase of electricity based upon a fair and
11 accurate assessment of DEC's and DEP's future avoided costs. As further
12 supported by DEC/DEP Witness Glen Snider, the Companies determined the
13 proposed fixed, forecasted energy and capacity rates using the peaker methodology
14 and in reliance upon each utility's current forecasts of energy and capacity costs
15 over the applicable term of the Schedule PP rate. Other rates, such as the Seller or
16 Administrative Charge and charges related to the supply of VARs help ensure that
17 the cost of supporting and billing the purchase of power from QFs are appropriately
18 recovered from the QF and not passed along to other customers as part of the retail
19 cost of service. The reasonableness of the methodology employed by the
20 Companies to establish the rates set forth in the Schedule PP is more fully discussed
21 in the testimony of DEC/DEP Witness Snider.

³ S.C. Code Ann. § 58-41-20(B).

1 **Q. ARE THE COMPANIES STANDARD OFFER TARIFFS COMPLIANT**
2 **WITH THE COMMISSION’S PREVIOUS ORDERS IN THE 2019**
3 **AVOIDED COST PROCEEDING?**

4 A. Yes. The Standard Offer Tariffs comply with the Commission’s Order Nos. 2019-
5 881(A) and 2020-315(A). The Companies have included several ministerial
6 corrections to the Standard Offer Tariffs to improve clarity, but have not proposed
7 any substantive changes to the Standard Offer Tariffs, with the exception of the
8 changes to the avoided cost rates, which DEC/DEP Witness Snider addresses.

9 **III. STANDARD OFFER POWER PURCHASE AGREEMENT**

10 **Q. PLEASE DESCRIBE THE STANDARD OFFER POWER PURCHASE**
11 **AGREEMENT THAT YOU HAVE INCLUDED AS DEC AND DEP**
12 **EXHIBIT 3 TO YOUR TESTIMONY.**

13 A. The Standard Offer PPA is the pro forma PPA that the Companies use to contract
14 with smaller QFs eligible for the Standard Offer for the purchase of energy and
15 capacity under PURPA. The Standard Offer PPA describes the QF Facility’s site
16 location, expected generation capacity, annual energy production, expected date of
17 operation, point of interconnection, delivery voltage, and the business name and
18 address of the QF owner. The Standard Offer PPA is thus essential to establishing
19 the physical parameters that support interconnecting the QF to the Companies’ grid
20 and to memorializing the commercial terms of purchasing the QF’s power.
21 Additionally, the Standard Offer PPA specifies the desired contract term and the
22 applicable rate option for the QF from Schedule PP.

1 **Q. WHAT ARE THE SPECIFIC REQUIREMENTS OF ACT 62 AS THEY**
2 **RELATE TO THE COMPANIES’ PROPOSED STANDARD OFFER PPAs?**

3 A. Act 62 requires DEC and DEP to offer fixed price PPAs to small power producers
4 for the purchase of energy and capacity at avoided cost rates, with “commercially
5 reasonable terms and a duration of ten years” until certain thresholds have been
6 met.⁴ In addition, such PPAs must be consistent with regulations and orders
7 promulgated by FERC.

8 **Q. HAVE THE COMPANIES COMPLIED WITH THOSE REQUIREMENTS?**

9 A. Yes. The Companies’ Standard Offer PPA, in conjunction with Schedule PP and
10 the supporting Terms and Conditions, offer eligible QFs a term duration of ten
11 (10) years and, as discussed below, set forth terms that are both consistent with
12 FERC regulations and commercially reasonable.

13 **Q. IS THE COMPANIES’ STANDARD OFFER PPA COMPLIANT WITH**
14 **THE COMMISSION’S PREVIOUS ORDERS IN THE 2019 AVOIDED**
15 **COST PROCEEDING?**

16 A. Yes. The Standard Offer PPA complies with the Commission’s Order Nos. 2019-
17 881(A) and 2020-315(A). The only changes to the Companies’ Standard Offer
18 PPA is the designations in the header and footer of the documents.

⁴ S.C. Code Ann. § 58-41-20(F)(1).

1 **IV. STANDARD OFFER TERMS AND CONDITIONS**

2 **Q. PLEASE DESCRIBE THE STANDARD OFFER TERMS AND**
3 **CONDITIONS THAT YOU ARE SPONSORING AS DEC AND DEP**
4 **EXHIBIT 4 OF YOUR TESTIMONY.**

5 A. The Terms and Conditions are incorporated into the Standard Offer PPA by
6 reference (*see* Section 2 of the PPA) and set forth the contractual obligations of
7 both the QF and the Companies as necessary to administer Schedule PP and the
8 Standard Offer PPA in a fair and consistent manner. The Terms and Conditions
9 serve a similar function as the Companies' Service Regulations for retail customers.
10 In particular, the Terms and Conditions address the QF's commitment to deliver
11 the capacity, quantity, and quality of electricity committed to delivered under the
12 Standard Offer PPA and then set forth the impacts and remedies of failing to meet
13 these obligations. The Terms and Conditions also address billing issues, such as
14 meter readings schedules and how payments are handled if a meter error occurs,
15 and describe the payment for interconnection facilities if not addressed in the
16 Interconnection Agreement executed with the QF.

17 **Q. WHAT ARE THE SPECIFIC REQUIREMENTS OF ACT 62 REGARDING**
18 **THE STANDARD OFFER TERMS AND CONDITIONS?**

19 A. Like Standard Offer PPAs, Act 62 mandates that terms and conditions must be
20 "commercially reasonable" and consistent with all FERC regulations and orders
21 issued to implement PURPA.⁵

⁵ S.C. Code Ann. § 58-41-20(B)(2).

1 **Q. DO THE COMPANIES' PROPOSED TERMS AND CONDITIONS**
2 **COMPLY WITH THOSE REQUIREMENTS?**

3 A. Yes. The Companies' Terms and Conditions have been available to QFs for a
4 number of years to support transactions with QFs pursuant to the Standard Offer
5 PPA and Standard Offer Tariff. The Commission found these documents to be
6 commercially reasonable in the 2019 Avoided Cost Proceeding.

7 **Q. ARE THE COMPANIES' STANDARD OFFER TERMS AND**
8 **CONDITIONS COMPLIANT WITH THE COMMISSION'S PREVIOUS**
9 **ORDERS IN THE 2019 AVOIDED COST PROCEEDING?**

10 A. Yes. The Standard Offer Terms and Conditions comply with the Commission's
11 Order Nos. 2019-881(A) and 2020-315(A). The only changes to the Terms and
12 Conditions are the designations in the header and footer of the documents.

13 **V. STANDARD FORM LARGE QF POWER PURCHASE AGREEMENT**

14 **Q. PLEASE INTRODUCE THE LARGE QF PPA THAT YOU ARE**
15 **SPONSORING AS DEC/DEP EXHIBITS 9 AND 10 OF YOUR**
16 **TESTIMONY.**

17 A. The Large QF PPA is the standard form PPA that the Companies will use to contract
18 with small power producer QFs greater than 2 MW in size and not eligible for the
19 Standard Offer that commit to sell and deliver energy and capacity to the
20 Companies over a future specified term under PURPA.

1 **Q. WHAT ARE THE SPECIFIC REQUIREMENTS OF ACT 62 REGARDING**
2 **LARGE QF PPAs?**

3 A. Act 62 expressly requires the Commission to review and approve one or more
4 standard form PPAs for use by small power production facilities not eligible for the
5 Standard Offer.⁶ The Act provides that such form PPAs should not be
6 determinative of the avoided cost price and length (or “term”) of the power
7 purchase agreement, but requires utilities’ form PPAs to contain a variety of
8 commercial terms and conditions, including, but not limited to, provisions
9 addressing force majeure, indemnification, choice of venue, and confidentiality.⁷

10 **Q. DOES THE COMPANIES’ PROPOSED LARGE QF PPA COMPLY WITH**
11 **THOSE REQUIREMENTS?**

12 A. Yes. Each of the contractual provisions required by Act 62 are included in the
13 Companies’ Large QF PPA. The Companies are presenting the Large QF PPA as
14 a “form,” which does not specify any pre-determined price or contract term
15 provisions in the PPA. The Large QF PPA also includes provisions addressing
16 force majeure, indemnification, choice of venue, and confidentiality, as required by
17 Act 62.

18 **Q. DOES ACT 62 SET FORTH ANY OTHER REQUIREMENTS THAT MAY**
19 **BE APPLICABLE TO THE COMPANIES’ LARGE QF PPAs?**

20 A. Yes. Act 62 generally requires that all PPAs must be commercially reasonable and
21 consistent with regulations and orders promulgated by the Federal Energy

⁶ S.C. Code Ann. § 58-41-20(A).

⁷*Id.*

1 Regulatory Commission (“FERC”) implementing PURPA.⁸ Act 62 also requires
2 that the Commission’s implementation and administration of PURPA should strive
3 to reduce the risk placed upon the using and consuming public.⁹

4 **Q. DOES THE COMPANIES’ PROPOSED LARGE QF PPA COMPLY WITH**
5 **THOSE GENERAL REQUIREMENTS?**

6 A. Yes. The Companies’ proposed Large QF PPA is consistent with applicable FERC
7 regulations and orders. The Companies’ proposed Large QF PPA also strives to
8 reduce the risk placed upon the using and consuming public, which is an objective
9 expressly contemplated by Act 62 in the Commission’s implementation of
10 PURPA.¹⁰

11 **Q. IN YOUR OPINION, IS THE COMPANIES’ LARGE QF PPA**
12 **COMMERCIALY REASONABLE?**

13 A. Yes. As I noted above, Act 62 requires the Commission to ensure that the
14 Companies’ Large QF PPA is commercially reasonable.¹¹ It is my opinion, based
15 upon my experience overseeing DEC’s and DEP’s PPA contracting process with
16 larger QFs, that the Companies’ form of negotiated PPA is commercially
17 reasonable.

⁸ S.C. Code Ann. § 58-41-20(B)(2).

⁹ S.C. Code Ann. § 58-41-20(A).

¹⁰ *Id.*

¹¹ S.C. Code Ann. § 58-41-20(B)(2).

1 **Q. PLEASE DESCRIBE GENERALLY THE EVOLUTION OF THE LARGE**
2 **QF PPA THROUGH THE 2019 AVOIDED COST PROCEEDING.**

3 A. In the 2019 Avoided Cost Proceeding, the South Carolina Solar Business Alliance
4 (“SCSBA”) and the Office of Regulatory Staff (“ORS”) made a number of
5 recommendations regarding certain provisions in the Large QF PPA. Through pre-
6 filed testimony prior to hearing, many of those issues were resolved by the parties
7 so that only a few issues in contention remained at the hearing. Additional areas of
8 agreement were reached during the witnesses’ testimony from the stand. This was
9 an iterative process where DEC/DEP worked with SCSBA and ORS to agree on as
10 many issues as possible. Only several issues were left to be resolved by the
11 Commission, such as the criteria for QFs to enter into a PPA, whether QFs could
12 terminate the PPA without penalty because of high interconnection costs, and
13 whether a surety bond could be used as performance assurance.

14 **Q. IS THE COMPANIES’ LARGE QF PPA COMPLIANT WITH THE**
15 **COMMISSION’S PREVIOUS ORDERS IN THE 2019 AVOIDED COST**
16 **PROCEEDING?**

17 A. Yes. The Large QF PPA complies with the Commission’s Order Nos. 2019-881(A)
18 and 2020-315(A). The Companies have made limited modifications to the Large
19 QF PPA to incorporate certain accommodations that have been requested by QFs
20 engaged in the contracting process using this document over the past 18 months.
21 Specifically, the definition of change of control was modified to remove transfers
22 typically done in connection with tax equity financing transactions where the seller
23 retains operational control. Certain representations/warranties have been modified

1 relating to “eligible commercial entity” and “eligible contract participant” to allow
2 QF Sellers additional flexibility for their representation to be effective as of the
3 commercial operation date. Also, Section 4.3 has been modified to extend the
4 Testing Period to allow QF Sellers additional time to complete testing where the
5 delay in obtaining a final permit to operate was caused by the Companies and which
6 is not the result of the QF Seller’s acts or omissions.

7 **Q. DO THE COMPANIES ANTICIPATE MAKING CHANGES TO THE**
8 **LARGE QF PPA IN CONJUNCTION WITH THE IMPLEMENTATION OF**
9 **THE COMPANIES’ NEW INTERCONNECTION PROCESS KNOWN AS**
10 **“QUEUE REFORM?”**

11 A. Yes. As described in the Companies’ application requesting approval of changes
12 to the generator interconnection process (which were approved by the Commission
13 Directive issued February 10, 2021, in Docket No. 2019-326-E), the Companies
14 have committed to reviewing the Large QF PPA (and the Notice of Commitment
15 Form) with stakeholders to resolve any inconsistencies between these documents
16 and the revised interconnection process.

17 **Q. WHEN DO THE COMPANIES ANTICIPATE UNDERTAKING THIS**
18 **REVIEW WITH STAKEHOLDERS?**

19 A. The Companies’ “queue reform” application is current pending at FERC. Upon a
20 determination on the Companies’ application by FERC, the Companies will begin
21 discussing with stakeholders any necessary changes to the Large QF PPA (and
22 Notice of Commitment Form). A determination by FERC is expected as early as
23 June, but there is no required time frame by which FERC must act.

1 **Q. DO THE COMPANIES INTEND TO CONTINUE NEGOTIATING PPAs**
 2 **WITH QFs THAT PROVIDE FOR MODIFICATIONS TO THE LARGE**
 3 **QF PPA IN ORDER TO MEET INDIVIDUAL NEEDS OF THE QF?**

4 A. Yes. Act 62 is clear that the provision requiring the Commission to approve a
 5 form contract PPA does not restrict the right of the parties to enter into PPAs with
 6 terms that differ from Commission-approved PPAs.¹² While the Companies must
 7 offer all QFs fair and non-discriminatory terms and conditions that appropriately
 8 protect ratepayers from the risk that I have described above, the Companies work
 9 cooperatively with QFs to modify certain provisions, as may be mutually
 10 agreeable to the parties, to address specific circumstances unique to the QF or to
 11 implement changes that are acceptable to the Companies and can be implemented
 12 in a non-discriminatory manner to other QFs that request a similar change.

13 **VI. LARGE QF TARIFF**

14 **Q. PLEASE PROVIDE AN OVERVIEW OF THE COMPANIES' LARGE QF**
 15 **TARIFFS, WHICH ARE INCLUDED AS DEC AND DEP EXHIBITS 5 AND**
 16 **6 OF YOUR TESTIMONY.**

17 A. In the 2019 Avoided Cost Order on Reconsideration, Order No. 2020-315(A), the
 18 Commission directed the Companies to prepare and file a tariff that is similar in
 19 structure to the Standard Offer, but is to apply to Large QFs.¹³ Consistent with this
 20 requirement, the Companies each developed a Large QF Tariff presenting the
 21 current avoided cost rates available to Large QFs and initially filed the Large QF

¹² S.C. Code Ann. § 58-41-20(A).

¹³ Order No. 2020-315(A), at 23.

1 Tariffs with the Commission on May 15, 2020. Also in Order No. 2020-315(A),
2 the Commission directed DEC and DEP to “incorporate the most up-to-date inputs
3 to the avoided energy and avoided capacity rates to reflect future changes to Duke’s
4 integrated resource plans consistent with DEC’s and DEP’s most recently-filed
5 IRPs in calculating the avoided cost rates for Large QFs.”¹⁴ This approach ensures
6 that the avoided cost rates paid to Large QFs accurately reflect the value provided
7 to customers, which, in turn, decreases the risk of customer overpayment in excess
8 of the Companies’ actual avoided cost, consistent with Act 62’s directive for the
9 Commission to strive to reduce the risk placed on the using and consuming public.
10 Since making the initial filing in May 2020, DEC and DEP have updated the Large
11 QF Tariffs, through a filing in the Commission’s E-tariff system, on a quarterly
12 basis, with the most recent updates submitted on February 1, 2021.

13 **Q. DO THE COMPANIES INTEND TO CONTINUE UPDATING THE LARGE**
14 **QF TARIFFS ON A QUARTERLY BASIS?**

15 A. Yes, the Companies intend to continue updating the Large QF Tariffs on a quarterly
16 basis upon approval of the tariff in this proceeding.

17 **Q. DOES THE COMPANIES’ LARGE QF TARIFF COMPLY WITH THE**
18 **COMMISSION’S PREVIOUS ORDERS IN THE 2019 AVOIDED COST**
19 **PROCEEDING?**

20 A. Yes, the Large QF Tariff complies with the Commission’s Order Nos. 2019-881(A)
21 and 2020-315(A). The Companies have included several ministerial corrections to
22 the Large QF Tariffs to improve clarity, but have made no changes to the substance

¹⁴ *Id.*, at 25.

1 of the documents, with the exception of the changes to the avoided cost rates, which
2 DEC/DEP Witness Snider addresses.

3 **VII. NOTICE OF COMMITMENT FORM**

4 **Q. PLEASE INTRODUCE THE COMPANIES' NOTICE OF COMMITMENT**
5 **FORM, WHICH IS INCLUDED AS DEC/DEP EXHIBITS 7 AND 8 TO**
6 **YOUR TESTIMONY.**

7 A. The Companies' Notice of Commitment Form is a document that small power
8 producer QFs (as defined by Act 62) may execute to establish a non-contractual
9 "legally enforceable obligation" to sell the output of their QF facility to DEC or
10 DEP, as described in greater detail below.

11 **Q. PLEASE BRIEFLY EXPLAIN ACT 62's DIRECTIVE FOR THE**
12 **COMMISSION TO APPROVE A NOTICE OF COMMITMENT TO SELL**
13 **FORM.**

14 A. Section 58-41-20(D) of the Act provides that small power producer QFs shall have
15 the right to sell their electric output to an electric utility by executing and delivering
16 to the utility a Commission-approved "notice of commitment to sell form". By
17 delivering a Notice of Commitment Form, the Act prescribes that the small power
18 producer is committing to sell its output (a) at the avoided cost rates, and (b)
19 pursuant to the PPA terms in effect at the time it submits the form to the utility.
20 The Act does not specify each element of the Form required to establish the QF's
21 "commitment to sell," but makes clear that the Form must provide the small power
22 producer a "reasonable period of time" from submittal of the Form to execute a
23 PPA with the utility. The Act also prohibits a utility from requiring a small power

1 producer to execute a PPA prior to receiving “a final interconnection agreement
2 from the electrical utility” as a condition to “preserving the pricing and terms and
3 conditions established by its submittal of the form to execute a [PPA].”¹⁵

4 **Q. IS IT YOUR UNDERSTANDING THAT THE ACT’S DIRECTIVE TO**
5 **ESTABLISH A NOTICE OF COMMITMENT FORM IS INTENDED TO**
6 **CREATE A COMMISSION-APPROVED PROCESS FOR A QF TO**
7 **COMMIT TO SELL ITS POWER PURSUANT TO A NON-**
8 **CONTRACTUAL “LEGALLY ENFORCEABLE OBLIGATION” UNDER**
9 **PURPA?**

10 A. Yes, and the Commission affirmed this in Order No. 2019-881(A), stating that
11 “[u]nderlying Act 62’s directive to establish a notice of commitment to sell form is
12 the concept of a legally enforceable obligation” or “LEO.”¹⁶ As was discussed in
13 the 2019 Avoided Cost Proceeding, a Notice of Commitment Form is a novel
14 concept and, to my knowledge, only North Carolina has established such a
15 mechanism to create a non-contractual LEO.¹⁷

16 **Q. PLEASE DESCRIBE WHAT IS MEANT BY A “LEGALLY**
17 **ENFORCEABLE OBLIGATION” UNDER PURPA.**

18 A. While I am not an attorney, I will provide my general understanding of this concept.
19 FERC’s regulations implementing PURPA specify that a QF can choose to sell its
20 output to the utility on an uncommitted and “as available” basis or the QF can
21 choose to sell its output pursuant to a “legally enforceable obligation,” whereby the

¹⁵ S.C. Code Ann. § 58-41-20(D).

¹⁶ Order No. 2019-881(A) at 140 (internal quotation omitted).

¹⁷ See Order No. 2019-881(A) at 140.

1 QF commits to deliver energy and capacity to the utility over a specified term.¹⁸

2 Where the QF chooses to sell its power pursuant to a LEO, PURPA requires that
3 rates paid to the QF be fixed at the utility's avoided costs calculated at the time the
4 LEO is established or, at the QF's option, at the time the power is delivered.¹⁹
5 FERC has recognized that a LEO may be established by the QF and the utility by
6 executing a mutually-binding contract, *i.e.*, a PPA. However, when a utility refuses
7 to sign a contract, the QF can bind the utility to purchase power from the QF by
8 establishing a non-contractual, but still binding, LEO. It is my understanding that
9 the South Carolina legislature intended this Notice of Commitment Form to serve
10 as the "non-contractual LEO" that I described above.

11 **Q. DID THE COMMISSION ESTABLISH A NOTICE OF COMMITMENT**
12 **FORM IN THE 2019 AVOIDED COST PROCEEDING?**

13 A. Yes. In 2019, the Commission approved the Notice of Commitment Form that the
14 Companies have been using since that time.

15 **Q. DOES THE COMPANIES' NOTICE OF COMMITMENT FORM**
16 **PROPOSED IN THIS PROCEEDING DIFFER FROM WHAT WAS**
17 **APPROVED IN THE 2019 AVOIDED COST PROCEEDING?**

18 A. The only changes that have been made are to remove the option to submit the Notice
19 of Commitment Form by mail, recognizing that all documents are now submitted
20 by email. The need for this change became especially apparent in the Covid-19
21 pandemic.

¹⁸ See 18 C.F.R. § 292.304(d).

¹⁹ *Id.*

- 1 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**
- 2 A. Yes.